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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 Senarble Campbell,

12 Plaintiff,

13 v.

14 Rainelle Smith, et al.,

15 Defendants.
16

No. 2:21-cv-01172-KJM-CKD

ORDER

17 Plaintiff Senarble Campbell, who is incarcerated and proceeding in forma pauperis, filed
18 this action to pursue claims about his mental health care in Mule Creek State Prison. *See*
19 *generally* Compl., ECF No. 1. He is not represented by counsel. His complaint was originally
20 filed in June 2021. On the same day he filed his complaint, he asked the court to appoint an
21 attorney to represent him. *See* Mot. Appoint Counsel, ECF No. 3. He wrote that he suffers from
22 a “mental illness” and “requires mental health care” and “effective communication,” which he
23 described as a rule requiring prison staff to speak “slowly and assure that the inmate
24 understands.” *Id.* at 1–2. Campbell also cited the COVID-19 pandemic and the likelihood that
25 experts will be asked to give opinions about his care. *Id.* at 1.

26 The case was referred to a Magistrate Judge under this district’s local rules. *See* E.D. Cal.
27 L.R. 302. The Magistrate Judge denied the motion to appoint counsel after considering
28 Campbell’s “likelihood of success on the merits” and his ability “to articulate his claims pro se in

1 light of the complexity of the legal issues involved.” Order (Aug. 24, 2021) at 2, ECF No. 6
2 (citing *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009)). The Magistrate Judge found
3 Campbell’s complaint “clear and concise,” and she found that it satisfied the screening
4 requirements of 28 U.S.C. § 1915A. *Id.*

5 About three months after the Magistrate Judge denied Campbell’s motion to appoint
6 counsel, he moved for reconsideration by the District Judge. Mot. Recons., ECF No. 18. He
7 cited another similar case in which the same Magistrate Judge had appointed an attorney to
8 represent him. *See* Order Appointing Counsel, *Campbell v. Tanton*, No. 18-671 (E.D. Cal.
9 Dec. 14, 2018), ECF No. 29; Am. Discovery & Sched. Order at 5, *Campbell v. Tanton*,
10 No. 18-671 (E.D. Cal. Oct. 14, 2021), ECF No. 117. Campbell argued his circumstances had not
11 changed since counsel was appointed in the other case. *See* Mot. Recons. at 2.

12 While Campbell’s motion for reconsideration was pending, he moved again for an order
13 appointing an attorney. *See generally* Second Mot. Appoint Counsel, ECF No. 31. He cited
14 difficulties in his ongoing recovery from a COVID-19 infection, such as weakness, tiredness, and
15 a cough. *See id.* at 1.

16 This court denied Campbell’s motion to reconsider because he had filed it about two
17 months after the deadline imposed by the Local Rules. *See* Order Denying Recons., ECF No. 50
18 (citing E.D. Cal. L.R. 303(b)). The court did not address the second motion to appoint counsel, as
19 it requested relief from the assigned Magistrate Judge. *See, e.g.*, Second Mot. Appoint Counsel
20 at 1 (“I ask that this motion be accepted as an ‘Emergency’ Honorable Carolyn K. Delaney.”).

21 About two weeks later, Campbell filed a third request to appoint counsel to represent him
22 temporarily while the parties participated in an alternative dispute resolution program for civil
23 rights cases filed by incarcerated plaintiffs. *See generally* Third Mot. Appoint Counsel, ECF
24 No. 51 (citing Referral Order, ECF No. 49). The Magistrate Judge denied this motion in a brief
25 order, finding no “exceptional circumstances.” *See* Order (Sept. 6, 2022) at 2, ECF No. 53. The
26 Magistrate Judge did not address the previous motion related to Campbell’s difficulties
27 recovering from COVID-19.

1 Under this District’s Local Rules, “a Judge may retain any matter otherwise routinely
2 referred to a Magistrate Judge.” E.D. Cal. L.R. 302(d). This matter will remain under referral to
3 the assigned Magistrate Judge for all pretrial proceedings, but the court elects on its own motion
4 to retain Campbell’s motion to appoint counsel based on his ongoing recovery from COVID-19.
5 Doing so will promote the just and efficient resolution of this action.

6 “In proceedings in forma pauperis, the district court ‘may request an attorney to represent
7 any person unable to afford counsel.’” *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th
8 Cir. 2004) (quoting 28 U.S.C. § 1915(e)(1)). Attorneys are appointed under this provision “only
9 in exceptional circumstances.” *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984),
10 *abrogated in part on other grounds by Neitzke v. Williams*, 490 U.S. 319 (1989). “A finding of
11 the exceptional circumstances . . . requires at least an evaluation of the likelihood of the plaintiff’s
12 success on the merits and . . . ability to articulate his claims ‘in light of the complexity of the legal
13 issues involved.’” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328,
14 1331 (9th Cir. 1986)).

15 This case remains in its early stages, so the likelihood of Campbell’s success can be
16 judged only by the allegations of his operative First Amended Complaint, ECF No. 39. It is
17 plausible the defendants could ultimately be liable, assuming his allegations are true. *Cf. Ashcroft*
18 *v. Iqbal*, 556 U.S. 662, 679 (2009) (summarizing the standard for motions to dismiss under
19 Federal Rule of Civil Procedure 12(b)(6) as an assessment of whether a complaint’s allegations
20 “plausibly give rise to an entitlement to relief”). The potential that Campbell’s claims are viable
21 could weigh in favor of appointing counsel. *Cf. Agyeman*, 390 F.3d at 1104 (reversing the denial
22 of request to appoint counsel in part because the likelihood of success was uncertain). On this
23 record, however, the court cannot conclude that Campbell’s ongoing recovery from COVID-19
24 has prevented him from capably pursuing his claims and grappling with the relevant legal issues.
25 For that reason, his circumstances are not “exceptional” in the necessary sense.

26 These circumstances may of course change. Discovery and motion practice may prove to
27 be complex as the case progresses, for example. And as noted above, in Campbell’s other
28 pending case, which involves many similar allegations, the Magistrate Judge concluded that

1 exceptional circumstances warranted the appointment of counsel. For that reason, this order does
2 not preclude the Magistrate Judge or this court from considering again in the future whether an
3 attorney should be appointed to represent Campbell in this case.

4 The motion to appoint counsel (ECF No. 31) is **denied without prejudice to renewal.**

5 IT IS SO ORDERED.

6 DATED: February 10, 2023.

7 
CHIEF UNITED STATES DISTRICT JUDGE